



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26298 of 2024

***M/s. Amit Metaliks Company,
Sundergarh***

....

Petitioner

-versus-

***Joint Commissioner of State Tax,
Enforcement Range, Sambalpur
and others***

....

Opposite Parties

Learned advocates appeared in the case:

For petitioner : Mr. Avijit Patnaik, Advocate

For opposite parties : Mr. S. Mishra, Advocate
(Standing Counsel)

CORAM:

**THE HON'BLE MR. JUSTICE ARINDAM SINHA
AND
THE HON'BLE MR. JUSTICE M.S. SAHOO**

Date of hearing and judgment : 23rd October, 2024

ARINDAM SINHA, J.

1. Mr. Patnaik, learned advocate appears on behalf of petitioner and submits, communications on blocking of Input Tax Credit (ITC), entitlement, of his client are all disclosed as annexure-1



series. They are impugned. At the outset, he refers us to our **judgment dated 10th September, 2024 in WP(C) no.22157 of 2024 (M/s. Atulya Minerals, Jurudi, Jajang, Keonjhar v. Commissioner of State Tax, Commissionerate of CT and GST, Lok Seva Bhwan, Cantonment Road, Cuttack and others)** to submit, his contention relates to sub-rule(1) under rule 86A in Odisha Goods and Services Tax Rules, 2017. It was not under consideration in said judgment.

2. He draws attention to section 74 in Odisha Goods and Services Tax Act, 2017. Sub-section(1) provides, inter alia, for determination of tax on ITC wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts. The provision requires revenue to issue show-cause as to why the dealer should not pay the amounts specified in the notice along with, inter alia, interest. Rule 86A, therefore, must follow the provision, for mandatory issuance of show-cause notice. Impugned communications are straightway intimations on blocking of ITC without the authority having earlier issued show-cause notices in respect thereof. He submits further, there has to be show-cause notice issued under section 74, for determination of the tax, after



which there can be blocking.

3. He draws attention to his client's letter dated 16th August, 2024 in seeking to demonstrate that after availing ITC, allegedly wrongfully, there was available ITC amounting to ₹25,23,498/-, as acknowledged by the authority on letter dated 2nd September, 2024. In the letter, it was also said that the available ITC, amounting to ₹25,23,498/- was thereby blocked under rule 86A. However, what was actually done is, without determination, the available ITC appropriated to show negative balance ITC of ₹52,50,376/- . This figure is shown in the electronic ledger and as a result his client is unable to file GST return since April, 2024. He seeks interference.

4. Mr. Mishra, learned advocate, Standing Counsel appears on behalf of revenue and submits, rule 86A does not correspond to section 74. Rule 142 does. Blocking under rule 86A is an interim arrangement and has nothing to do with determination under section 74. Recovery of tax is provided for under section 79. It comes after the determination is made. He opposes the writ petition.

5. Rule 86A provides for blocking of available input credit. Section 74 deals with determination of tax, inter alia, on wrongfully availing ITC. Thus we see an essential difference between section



74 operating in a field where ITC has already been availed of and rule 86A, operating where there is available ITC. In the circumstances, requirement under section 74 for issuance of show-cause notice cannot be implied as mandate of pre-condition for blocking under rule 86A.

6. Revenue is required to answer in uploading information in the electronic ledger to show that petitioner has negative ITC. This they can by demonstrating such an entry can be made in the electronic ledger, as provided in the Act or the Rules. The negative entry implies action taken on recovery. Petitioner is before us because there has been blocking of his available ITC, the availed part of it alleged by revenue to be wrongful.

7. On query from Court Mr. Mishra submits, there is no provision enabling negative entry in electronic ledger regarding ITC in respect of a registered dealer. Revenue will cause correction by uploading correct figure of available ITC. At best there can be further information uploaded in the ledger to show that the available ITC stands blocked.

8. Mr. Patnaik submits, pursuant to reasons furnished for blocking his client had applied for unblocking. The application was



by representation dated 10th August, 2024 followed up by reminder. The authority is directed to deal with the representation expeditiously, within two weeks of communication.

9. Mr. Patnaik then urges on prayers (c) and (d). He refers us to intimation of tax ascertained, given in form GST DRC-01A with reference to rule 142(1A). He submits, without determination of the tax this intimation has been given. Furthermore, there has thereafter been assessment made under section 62, alleging non-filing of return when his client, as aforesaid, could not file GST return because of wrong information uploaded in the electronic ledger.

10. Mr. Mishra draws attention to sub-rule(1A) under rule 142 and lays emphasis that discretion is granted to the proper officer to issue intimation prior to, inter alia, service of notice under sub-section (1) in section 74. The intimation is exactly that. Show-cause notice will follow because petitioner cannot dispute the intimation. There will be determination on tax and thereafter recovery. So far as the assessment made under section 62 is concerned he submits, blocking of ITC has nothing to do or is not an impediment for a registered dealer to file return. Referring to sub-section(2) in section 62 he points out, the dealer can file return within 30 days of receipt



of the assement order. Petitioner has the remedy.

11. We accept revenue's contention on the intimation issued. The proper officer has exercised discretion in intimating petitioner that ITC has wrongly been availed by him and therefore there will be determination and recovery of tax. Regarding the assessment made under section 62, we appreciate that petitioner, in disputing the allegation of wrongfully availing ITC and suffering blocking of his available ITC, may have been prevented from filing return. As such, we direct that petitioner will have 30 days to file return commencing from date of communication of decision taken on his representation for unblocking his ITC.

12. The writ petition is thus disposed of.

(Arindam Sinha)
Judge

(M.S. Sahoo)
Judge

Prasant